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TECHNICAL VIOLATIONS OF ELECTION LAWS AS AFFECTING THE RESULTS OF AN ELECTION.

The day of technicalities has passed. We have had occasion recently to call attention to the modern rule which is intended to abolish the blighting affect of technical violations of the rules of evidence, to-wit, the rule that no mere violation of a rule of evidence shall be effective to reverse a decision of a court or the verdict of a jury unless it can be said to have materially affected the result.

But this new rule against technicalities is not confined in its operation to the rules of evidence. In all the wide range of legal construction, whether of principles of substantive law or of rules of procedure, the modern constructionist no longer harks back to the days when judges insisted so vigorously upon the tithing of "mint, anise and cummin," and forgot the "weightier matters of the law," but to-day the merits of the case are weighed carefully and mere collateral considerations of form are not made so important as to override the main issues in the case.

This modern rule applies to election contests. In the aftermath of the great political campaign through which this country has just passed, there is at the present time considerable scrambling and snarling over the odds and the ends of the political scrap heap, and for the sake of the emoluments of office men are content to succeed in such contests on the barest technicality, thus overriding the public will and shocking the public conscience.

No man is entitled to public office who fails to receive the popular mandate to "go up higher," and one who fails to receive such an expression of the public confidence violates such confidence by even accepting a certificate of election, much less *demanding* that he shall ride into office, on a technicality which overrides the public will. It was not long since that a congressman in Colorado voluntarily relinquished his commission on being convinced that fraud had contributed largely to the result of the election. It is also a violation of public confidence for a candidate to seek to defeat the public will on mere technical grounds, such as the fact that ballots are marked with only one initial instead of all the initials as provided by law, or that the numbering was with pencil or by a numbering machine instead of with pen and ink, or that a ballot box was sent to the wrong depository, etc.

The general rule in all such contests is that "the votes of innocent electors are not invalidated by irregularities on the part of public officials charged with the duty of preparing and printing official ballots, when such irregularities have not prevented the free and fair expression of the popular choice unless the legislature has expressly so declared." 10 Am. & Eng. Ency. Law, 722. This is a concise and accurate statement of the rule against technicalities in election contests. How often this rule is violated every lawyer knows. In the passion and bitter prejudice engendered by political contests it is no wonder that our courts and legislative bodies who pass upon such contests throw principle to the winds and let jealous-eyed partisanship hold the scales in place of the blindfolded goddess who knows neither white nor black, democrat nor republican, rich nor poor, high nor low, but sees only by introspective considerations those higher principles not recognized by the naked eye, but which alone make for exact justice.

The day of technicalities is gone. And this is so, though here and there some belated judge or lawyer has not learned of the fact. And no one has more forcefully consigned it to utter oblivion and so magnificently penned the epitaph under which it so peacefully and so securely rests, and so sternly forbade that it should ever have a day of resurrection, than that beautiful writer and

consummate jurist, the late Circuit Judge Caldwell, in the case of McDonald v. Nebraska, 101 Fed. 171, where that learned judge said: "There was a time in England and in this country when the fundamental principles of right and justice which courts were created to uphold and enforce were esteemed of minor importance compared to the quibbles, refinements, and technicalities of special pleading. In that period the great fundamentals of the law seemed little, and the trifling things great. The courts were not concerned with the merits of a case, but with the mode of starting it. And they adopted so many subtle, artificial and technical rules governing the statement of actions and defenses—for the entire system of special pleading was built up by the judges without the sanction of any written law—that in many cases the whole contention was whether these rules had been observed, and the merits of the case were never reached, and frequently never thought of. Happily for mankind, and for the law itself, that epoch is past in England and in this country, and we now have an epoch in which substance is more considered than form, in which the justice and right of the case determines its decision."

NOTES OF IMPORTANT DECISIONS.

APPEAL AND ERROR—MUST A STATUTE PROVIDING FOR APPEALS ALSO PROVIDE FOR NOTICE OF APPEAL TO THE ADVERSE PARTY?—The question propounded as the subject of this brief note is answered firmly in the negative by the Supreme Court of California in In re McPhee's Estate, 87 Pac. 878. This was an appeal from the probate court, but the court on appeal based its decision on general grounds that the methods and conditions of appeal are purely statutory, and lack of notice so essential in other judicial proceedings is not essential in a proceeding on appeal, nor is "due process of law" denied to adversary party who is not given notice of an appeal taken.

The language of the court is interesting. The court said: "Due process of law is law in its regular administration, through courts of justice (2 Kent's Commentaries, 10), and as said by Judge Field, in Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565, of the words 'due process of law' when applied to judicial proceedings, 'they then mean a course of legal procedure according to those rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights.' It is the right of any litigant to have his cause tried and determined under rules of procedure the same as are applied to other similar cases, and when this is afforded him, he has no ground to complain that 'due process of law' is not being observed. Before any appeal is taken the court has already acquired jurisdiction in the action over the parties by original process, and the appeal is but a proceeding in the cause after that jurisdiction has attached. What the method and procedure in taking an appeal shall be is a matter for determination by the Legislature, and that it can prescribe, in the exercise of its plenary power over the subject, for taking an appeal without any service of the notice thereof is so clear as to admit of no doubt. Counsel for respondent has cited us to no authority which, even by analogy, supports his claim that failure to provide for service of the notice of appeal is not 'due process of law.' The only cases referred to by him are those of this court, where it is held that the service of notice of appeal was necessary in order to confer jurisdiction upon this court on appeal. But these cases have no bearing on the question here, because heretofore our statute has always required service of the notice, and, of course, when the Legislature prescribes service, it is essential that it be made. None of these cases cited even intimate (and naturally would not, because the question could not be involved) that the Legislature might not, as it has in this act, dispense with service without violating the constitutional provision. Whether service of the notice shall or shall not be made is its province to determine, and no constitutional right of respondent is invaded because it is declared that such service need not be made. The purpose of service could only be to give the respondent actual notice that an appeal had been taken. But as he is constructively in court during the pendency of the action, it was no violation of the constitutional provision to require him to take notice of any such appeal as part of the proceedings in the case. The statute fixed the time in which the notice of appeal might be filed and the respondent could readily ascertain, by examining the records and files of the case in the clerk's office, whether it had been

in fact filed. Having notice in law that it might be filed within a specified time, he was bound in law to take notice of its actual filing within that time."

LAISSEZ FAIRE IN THE UNITED STATES.

PART I.

In England, ideas as to the proper limitation to be observed with respect to the functions of government, find practical and unhampered expression through the medium of parliament. Proposed enactments which may be supposed to go beyond the customary bounds of governmental action are debated by that body without reference to a controlling fundamental law to which its action is subordinate. The legislative power of parliament knows no limitation save that imposed by the common sense of its members and the sentiment of the people at large. A bill when once enacted, becomes a law, no matter how violent a departure it may be from precedent, and no matter how far beyond what has theretofore been regarded as the proper sphere for legislation it may go. But in the United States, the ordinary legislative bodies are subject to the restraints of a written constitution; a bill may pass through all the stages essential to its enactment as a law, and may be given practical effect as such by public officers, but unless it conform to the requirements of the constitution it will be set aside and held for naught by the courts, even although supported by public sentiment. This written constitution is the paramount law and while it may not in express language define or purport to define the boundaries of legislative action, yet this is done through its construction by the courts. The constitution is not the work of the ordinary legislative body. It is drafted by delegates chosen for the purpose, and adopted by a vote of the people of the state to which it applies, but its scope and effect is determined by and dependent upon judicial construction. Thus in the United States, the courts and the constitutional conventions taken together form tribunals for determining the process and the scope of ordinary legislation.[1] These tribunals are by a sort of fiction regarded as peculiarly representative of the people in their sovereign capacity. Through them the people are regarded as speaking with an authority superior to that of the ordinary governmental bodies; and while as a matter of fact, delegates to constitutional conventions are usually elected by far fewer votes than are cast for legislative representatives,[2] and the same is true with respect to the election of judges of the state supreme courts,[3] yet so great is the influence of the power which they wield coupled with the sentimental concept of sovereignty in the people, that these tribunals are regarded with far greater respect than the ordinary legislative bodies.

The actual exercise, in a democratic country of a power superior to that of the legislature, has been exemplified nowhere save in the United States. In other countries there has perhaps been more theoretical discussion regarding the province of government, there have been more political philosophers; the United States has not produced a Hobbes, a Locke, a Bentham, a Spencer or a John S. Mill; but within the covers of the federal and state law reports are to be found a statement of principles of government as they have been applied to particular cases for the annulment of legislative acts, and for the protection of individual rights; or what are conceived to be individual rights. That this system has had

(1) Many of the state constitutions go far beyond what is usually regarded as the proper scope of constitutional law. Besides indicating the general framework of government and the process of legislation and the powers of the executive and legislative departments, they contain provisions of ordinary private law.

(2) This is particularly true of the constitutional convention of Michigan which has just completed a draft of a new constitution for that state. The delegates to this convention were elected in October, 1907, the total vote polled being less than one-third of that ordinarily cast at congressional and state elections.

(3) The judges of the federal supreme court are appointed for life by the president. The judges of the Massachusetts supreme court and perhaps of some other states are appointed by the chief executive of the state.

its effect upon the character, habits and thought of the pople there can be no doubt. It is probably in large part responsible for the prevalence of what may be described as democratic individualism; a sentiment that one man is as good as another, that all should have equal rights, but that law makers cannot be trusted to enact laws with impartiality; the belief that "the less of government, the better; that is to say, the fewer occasions for interfering with individual citizens are allowed to officials, and the less time citizens have to spend in looking after their officials so much the more will the citizens and the community prosper. The functions of government must be kept at their minimum."[4] This is essentially the sentiment Laissez Faire, or as more emphatically expressed in Anglo Saxon, by the boy on the street, "let me be."

It is true, also, however, that there is a strong counter current opposed to laissez faire, which manifests itself in legislation, and in the demand for legislation which is sometimes called paternalistic or socialistic. Those who believe that this counter current is in the right direction are usually impatient of the power of the courts as the interpreters of the constitutions, for that power is very generally used to check this counter current.

A review of the socialistic legislation which has been annulled by the courts through constitutional construction would fill a large volume, but illustrations may here be given sufficient to convey a general idea of the sentiment laissez faire entertained by some of the leading judges of the United States. We say the sentiment laissez faire, for the political doctrine laissez faire, as originally preached in France is probably not adhered to by any person in the United States. It was even repudiated as too narrow by Herbert Spencer,[5] who condemned state education as involving an illegitimate use of the powers of government.

Many of the state constitutions contain specific limitations upon the power of the legislature, but even where this is not the case, the courts by construction of very general terms effect the same result; although it is often said that state legislatures have plenary power, except as they are expressly restricted by the constitution. But the superiority of the power of the courts over the legislatures is everywhere recognized in the United States, and having the power to declare an act of the legislature void, there is no practical limit upon the exercise of this power, except the moral restraint of public opinion. We find, therefore, that the power of the legislature is in practice about as much circumscribed in the states whose constitutions do not, as in those whose constitutions do contain specific limitations upon its power. For in some of the newer states specific constitutional provisions are intended to grant powers which by judicial construction of general limitations had been denied to other legislatures.[6] In Massachusetts the constitution contains a provision apparently designed to avoid conflict between the courts and the legislature; the opinion of the highest court regarding the validity of a proposed act may be obtained in advance by the legislature.[7] Hence the "Opinion of the Judges" has in Massachusetts, become an important factor in legislation.[8]

(4) Prof. Bryce, American Commonwealth, vol. 2.

(5) See his conversation with an American friend, reported in the third volume of his essays, p. 479.

(6) This is particularly true with respect to labor legislation. Thus Idaho, Oklahoma and Washington provide in their constitutions that the legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life and deleterious to health and fix pains and penalties for the enforcement of the same.

For a synopsis and analysis of the state constitutions, see Federal and State Constitutions by Stimson, April, 1908.

(7) This is also true in New Hampshire, Maine, Rhode Island, Colorado and Florida. Stimson Fed. & St. Consts., p. 347.

(8) Prof. Stimson says that the practice of requiring in advance an opinion from the supreme court regarding proposed legislation, was taken from the British Parliament. Fed. & St. Const. 347.

It is a practice that seems somewhat inconsistent with constitutional provisions regarding the division of the powers of government. No-

Limitations upon Business Undertakings of Government — Under General Constitutional Provisions. — In 1892, the opinion of the judges of the Supreme Court of Massachusetts, was required upon the question of the power of the legislature to authorize a municipality to engage in the business of buying wood and coal for fuel for the purpose of reselling the same to the inhabitants of the municipality. Apparently the only provisions of the Massachusetts constitution which the court regarded as having any bearing upon the question were the following: "The end of the institution, administration and maintenance of government is to secure the existence of the body politic; to protect it, and furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life."[9] "All men are born free and equal, and have certain, natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness."[10] Although quoting these provisions, the judges appear to have based their opinion largely upon the rule of law that taxes must be levied for a public purpose, assuming that for a municipality to engage in the business of buying and selling fuel would involve the levy of a tax to maintain the business. From historical data they came to the conclusion that the buying and selling of fuel could not be regarded as a public business in Massachusetts, although during the colonial period the town of Boston had engaged in the business of buying and selling grain for the benefit of the inhabitants, the action of Boston in this particular being anomalous. In a previous opinion regarding the power of the legislature to authorize a municipality to manufacture and sell gas and electricity for lighting purposes the judges had decided in favor of the power,[11] they therefore distinguished the fuel from the lighting business, pointing out that to establish a gas or electric lighting business might require the exercise of eminent domain. The opinion contains the following: "Gas or electricity for furnishing light has in recent times become a most convenient means of lighting both public and private buildings, streets and grounds. It is impracticable that each individual should manufacture gas or electricity for himself; but this can best be done by some company or the municipality for a considerable territory, and for the use of both the municipality itself and the inhabitants. * * * The pipes or wires must be laid in or over the public ways or in or over land taken for the purpose, which may require the exercise of the right of eminent domain. These were some of the reasons why the subject seemed to the justices a proper one for municipal regulation and control, and to constitute a service which a municipality might be authorized to perform. * * * But when the constitution was adopted the buying and selling wood and coal for fuel was a well known form of private business, which was generally carried on as other kinds of business were carried on, and is now carried on in much the same manner as it was then. It was, and is, a kind of business which in its relations to the community, did not and does not differ essentially from the business of buying and selling any other of the necessaries of life. Although all kinds of business may be regulated by the legislature, yet to buy and sell coal and wood for fuel requires no authority from the legisla-

where is this division insisted on in clearer language than in the Massachusetts constitution. Section 30 of the declaration of rights reads as follows: "In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial or either of them; the judicial shall never exercise the legislative and executive, or either of them; to the end it may be a government of laws and not of men."

(9) Preamble, Mass. Const.

(10) Part 1, Art. 1, Mass. Const. Opinion of Justices, 155 Mass. 598, 15 L. R. A. 809.

(11) Opinion of Judges, 150 Mass. 592, 8 L. R. A. 487.

ture, and requires the exercise of no powers derived from the legislature. * * * If there be any advantage to the community in buying and selling wood for fuel at the risk of the community on a large scale, and on what has been called 'the co-operative plan,' we are of the opinion that the constitution does not contemplate it as one of the ends for which the government was established, or as a public service for which cities and towns may be authorized to tax their inhabitants." Mr. Justice Holmes filed a dissenting opinion, declaring that "when money is taken to enable a public body to offer to the public without discrimination an article of general necessity, the purpose is no less public when that article is wood or coal, than when it is water or gas or electricity or education."[12]

The question was re-submitted to the Massachusetts judges during the coal famine in the winter of 1902-1903, with the further inquiry as to whether "An Act to Authorize Cities and Towns to Buy and Sell Fuel in *Certain Emergencies*" might not be within the constitutional powers of the legislature?[13] The judges affirmed their former opinion, and in the further discussion of the subject, said: "The establishment of a business like the buying and selling of fuel requires the expenditure of money. If this is done by an agency of the government there is no way to obtain the money except by taxation. Money cannot be raised by taxation except for a public use. Until within a few years it generally has been conceded, not only that it would not be a public use of money for the government to use it in the establishment of stores and shops for the purpose of carrying on a business of manufacturing or selling goods in competition with individuals, but also that it would be a perversion of the function of government for the state to enter as a competitor into the field of industrial enterprise with a view either to the profit that could be made through the income to be derived from the business or to the indirect gain that might result to purchasers if prices were to be reduced by governmental competition. There may be some now who believe it would be well if business was conducted by the people collectively, living as a community and represented by the government in the management of ordinary industrial affairs. But nobody contends that such a system is possible under our constitution. It is plain, however, that taxation of the people to establish a city or town in the proprietorship of an ordinary mercantile or manufacturing business would be a long step towards it. If men of property, owning coal or wood yards should be compelled to pay taxes for the establishment of a rival coal yard, by a city or town, to furnish fuel at cost, they would thus be forced to make contributions of money for their own impoverishment; for if the coal yard of the city or town was conducted economically they would be driven out of business. A similar result would follow if the business of furnishing provisions and clothing and other necessaries of life were taken up by the government, and men who now earn a livelihood as employers would be forced to work as employees in stores and shops conducted by the public authorities. Except for the severely onerous conditions from which we are now suffering, the cause of which arose outside of this state, beyond the reach of our legislative enactments, there is nothing materially different between the proposed establishment of a governmental agency for the sale of fuel and the establishment of a like agency for the sale of other articles of daily use." With regard to the effect of a fuel famine or other emergency upon the validity of the proposed legislation, the judges were of opinion that it would not ordinarily vary the case. But that where the condition was one short of absolute famine,—"a condition in which the supply of fuel would be so small, and the difficulty of obtaining so great, that persons desiring to purchase it would be unable to supply themselves through private enterprise,—the

(12) Opinion of Judges, 15 L. R. A. 812.

(13) Re Municipal Fuel Plants, 60 L. R. A. 592.

judges were of opinion that as agencies of government might be able to obtain fuel when citizens generally could not, the government might lawfully constitute itself an agent for the relief of the community, but temporarily only, and that such an emergency would not justify the establishment of permanent coal or wood yards.

State Trading in Intoxicating Liquors.—The Dispensary Act of South Carolina, which authorized the state to dispense intoxicating liquors, and prohibited the manufacture and sale of such liquors by private persons for their private benefit was attacked as unconstitutional, and was at first declared void by the supreme court of that state on the ground that it conflicted with the first and fourteenth section of the first article of the constitution of South Carolina, which reads as follows: "All men are born free and equal, endowed by their creator with certain inalienable rights, among which are the rights of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness. * * * No person shall be * * * despoiled or dispossessed of his property, immunities or privileges * * * or deprived of his life, liberty or estate, but by the judgment of his peers or the law of the land." In its first opinion[14] the court took the view that the right to buy and sell intoxicating liquor was incidental to the right to personal liberty and the right to acquire property, and therefore, within the protection of the constitutional provisions quoted. It also held that the state had no power to embark in any business involving the purchase and sale of any article of commerce for profit, even although there might be no express provision in the constitution denying that power. But when the question was again before the court, it declared both of these propositions to be unsound, and sustained the act as within the powers of the legislature.[15]

W. A. COUTTS.

Sault Ste Marie, Mich.

(14) McCullough v. Brown, 41 S. C. 220, 23 L. R. A. 410.

(15) State v. Aiken, 26 L. R. A. 345, 42 S. C. 222.

(To be continued).

MUNICIPAL CORPORATIONS—UNREASONABLE PROVISIONS FOR GIVING NOTICE OF CLAIM.

HASE v. CITY OF SEATTLE.

Supreme Court of Washington, Dec. 8, 1908.

Provisions requiring notice to a city of the time, place, etc., of an injury from defects in streets for which damage is claimed, whether legislative or enacted by ordinance under legislative authority, will be upheld only when reasonable and in aid of the administration of justice.

DUNBAR, J.: The appellant brought an action against the city of Seattle for damages resulting from personal injuries. A claim for damages for said injury was filed with the city clerk of said corporation, and later a suit brought thereon. At the trial the claim provided for by ordinance was offered in evidence, and objection was made to its introduction, which was sustained by the court. The court directed the jury to return a verdict in favor of the city, which was done. Judgment of dismissal was entered, and appeal followed. So that the only question in the case is whether the claim presented by the appellant to the city council was sufficient.

The principal objection urged to the claim, and the one on which the court rejected it, is that the claimant did not state her residence for the past year, and this alleged defect was the cause alleged by the city for refusing the claim. It is also insisted that the notice was not sufficient, in that it did not clearly set forth the defect in the sidewalk which was the alleged cause of the accident. The claim presented was as follows: "To the City Council of the City of Seattle: The undersigned, Elizabeth Hase, hereby presents to the said city council her claim for damages against the city of Seattle, a municipal corporation of the state of Washington, in the sum of $10,000, which said claim is hereby filed with the clerk of said city of Seattle; that said claim for damages is on account of personal injuries sustained by the said Elizabeth Hase in the said city of Seattle on the

23d day of March, 1907, at 9:30 p. m.; that said injuries consist of pain from a broken left forearm (a fracture known as 'Calles fracture'); also suffers much pain from being bruised through the chest, between the shoulder blades, and across the small of the back, and since the accident she has suffered nervous chills; that the said injuries were sustained by the said Elizabeth Hase on said date in the city of Seattle on the west side of Sixth avenue, between Blanchard street and Bell street; that the said injuries were caused by said Elizabeth Hase falling through a defective sidewalk." The ordinance demanding the presentation of the notice was as follows: "All claims for damages against the city must be presented to the city council and filed with the clerk within thirty days after the time when such claim for damages accrued, and no ordinance shall be passed allowing any such claim or any part thereof, or appropriating money or other property to pay or satisfy the same or any part thereof, until such claim has first been referred to the proper department, nor until such department has made its report to the city council thereon, pursuant to such reference. All such claims for damages must accurately locate and describe the defect that caused the injury, accurately describe the injury, give the residence for one year last past of the claimant, contain the items of damages claimed, and be sworn to by the claimant. No action shall be maintained against the city for any claim for damages until after the same has been presented to the city council and sixty days have elapsed after such presentation."

Counsel for appellant vigorously inveigh against the application of the rule of liberal construction, insisting that the city is authorized under the laws and Constitution to make such provisions as it deems necessary for its protection, and that it is not the province of the court to destroy such provisions by construction. So far as the first proposition is concerned, it is not a question of construction, liberal or otherwise, for the ordinance plainly provides that the claimant must state in his notice his residence for one year last past. This language is not susceptible of any two meanings, and therefore the only question to be considered is the right of the city to make such a demand of a claimant as a prerequisite to waging his claim for damages. It is insisted that the uniform trend of authority is that such charter provisions are constitutional and wise, and some authorities are cited to sustain that contention, among them Scurry v. Seattle, 8 Wash. 278, 36 Pac. 145. An examination of this case, however, convinces us that it does not announce all that is claimed for it by learned counsel. All that that case held was that the provision of the freeholders' charter of Seattle, declaring that no action shall be maintained against the city for any claim for damages unless such claim had been presented to the city council within six months after the time when such claim for damages had accrued, was not unconstitutional and void as being in contravention of the statute of limitations with reference to the commencement of actions; but it was also held in that case that the only limitation of the right of the city to make a provision concerning the time in which a claim for damages should be presented would be the limitation of a reasonable time, and that must necessarily always be a limitation to be taken into consideration, else cities would be conferred with power to destroy rights existing at the common law. As showing that it never was the idea of this court that the power of cities is unlimited, it was held in Tacoma v. State, 4 Wash. 64, 29 Pac. 847, that, although the freeholders' charter of a city may provide an ample method for the condemnation of private property for use as a public street, and legislative enactment may confer upon cities organized under freeholders' charters the authority to appropriate private property to corporate uses, such power was inoperative, in the absence of an act of the Legislature conferring the right of eminent domain and prescribing the method by which it should be exercised. And in State ex rel. Snell v. Warner, 4 Wash. 773, 31 Pac. 25, 17 L. R. A. 263, it was held that, under article 11, sec. 10 of the Constitution authorizing a city of 20,000 or more inhabitants to form a charter for its own government, and providing for amendments thereto, no authority is given such city to extend its boundaries by amendment to its charter; the court in that case saying: "While the provisions of the Constitution are to be given every liberal interpretation when the accomplishment of the purpose to be attained by them is at stake, we are bound to remember that they are somewhat unusual and extraordinary provisions, and that they are indirect restrictions on the power of the Legislature, which can prescribe rules for the government of every municipal corporation but these."

It must be borne in mind that the powers claimed by the city in this case, and in fact in all cases of this character, are restrictions on common-law rights. In Seymour v. Tacoma, 6 Wash. 138, 32 Pac. 1077, it was held that the power conferred by the Constitution and laws did not extend to the municipality power to

impose a qualification of registration upon the electors. In State ex rel. Fawcett v. Superior Court, 14 Wash. 604, 45 Pac. 23, 33 L. R. A. 674, it was held that these constitutional provisions would not sustain charter provisions providing a tribunal for determining election contests. There we said: "But we must not lose sight of the elementary proposition that municipal corporations have only the powers which are specially conferred upon them by the Legislature, or such other powers as by necessary implication flow therefrom." But this identical question has been decided by this court in Durham v. Spokane, 27 Wash. 615, 68 Pac. 383, where it was held that such charter provisions and restrictions could only be maintained where such conditions and restrictions were reasonable. This was a case for personal injuries alleged to have been sustained by reason of a defective sidewalk. So that the question there discussed was the identical question at issue in this case, and in aid of the construction of the requirement in the ordinance in that case this court said: "But it is not the rule that a city may say whether or not it shall be held for personal injuries caused by its neglect of duty. Charter provisions of the character in question, whether enacted by the Legislature, or, as in the present case, by the city itself, are to be upheld only so far as they are reasonable and tend to the due administration of justice. When such provisions so far depart from reasonableness as to amount to a denial of justice, they are void." So that the question in this case is resolved into a question of the reasonableness of the ordinance requiring the claimant to give his residence for one year last past.

It seems to us that this provision is unreasonable, and would in no way aid the city in the investigation of the claim. This court, in common with all other courts, has uniformly held that the object of these ordinances and the theory upon which they were sustained was notice, so that the city might be able to prepare for the trial of the cause if it was deemed expedient not to settle the claim. From an excerpt from the opinion of the court it seems that the court was influenced largely by the report of an Oregon case, wherein it was ascertained that a professional fraud, who was permanently crippled, had been claiming in different actions that the cause of the injury to his leg was falling through sidewalks in different cities, and had secured judgments fraudulently in different cities in Oregon; that the fraud had finally been discovered, and the claimant sent to the penitentiary. But the fact that fraud in an exaggerated case may be perpetrated upon a city is no reason for the enactment of unreasonable restrictions. Fraud is perpetrated sometimes, not only upon municipal corporations, but upon other corporations and upon individuals, in claims and suits of different characters. A provision requiring claimant to give a present residence, as was the case in Johnson v. City of Troy, 24 App. Div. 602, 48 N. Y. Supp. 998, cited and relied upon by counsel, might be held to be reasonable, for the reason that it would give the city authorities an opportunity to see the claimant and to talk with him, ascertain something of his appearance, or to make advances towards settlement of his claim, if deemed expedient. But to require anything further than that seems to be unnecessary and savors somewhat of inquisitiveness. If a requirement of this kind should be sustained, it is difficult to tell where the subject of biography would end. If the object is to inquire into the character or reputation of the claimant, then it might as well be said that the city had a right to demand, as a prerequisite to commencing an action, that the claimant should give the place of his birth, the different localities in which he had resided from that time up until the filing of the claim, his calling or profession, his parentage, associations, and a thousand and one other things that might be interesting to the city as a matter of idle curiosity. We have not been able to find any case exactly on this point, for it seems that it has never occurred to any other city to place any such provision in its charter. Believing that the provision is unreasonable and uncalled for, especially in consideration of the other requirement prohibiting the commencement of the action for 60 days from the date of the presentation of the claim, thereby allowing ample time for all pertinent investigation, we think the court erred in rejecting the admission of the notice on that ground.

The other objection urged by counsel for the respondent is that the language used, viz., "that the said injuries were caused by said Elizabeth Hase falling through a defective sidewalk," the location of the sidewalk having been described, is not such a description of the defective sidewalk as is demanded by the ordinance in the provision that "all such claims for damages must accurately locate and describe the defect that caused the injury"; and Mears v. Spokane, 22 Wash. 323, 60 Pac. 1127, is relied upon to sustain this contention. In that case the language of the claim was as follows: "Which injuries were caused by defects and obstruction in the sidewalk of the said city," describing the location; and this court said, in

sustaining the objection to the claim, that: "To state that the injury was caused by a defect and obstruction in the sidewalk is but to state the general ground upon which a city in every case is liable for injuries sustained upon its streets, but it states no cause for the particular injury. The charter provision is intended to require notice to be given of the cause of the particular injury, and a notice that fails so to do cannot be made the basis of an action against the city for personal injuries."

It seems to us that the case at bar does not fall within the reason of the rule announced in that case. There it could not be ascertained, from the claim presented, whether the defect was too narrow a sidewalk, or whether it was a temporary obstruction on the sidewalk, or whether it was something hanging down from above and obstructing the sidewalk. In fact, it gave no notice whatever of the character of the defect, and the officers of the city might not have been able to ascertain the character of the defect by a visit to the location. But claims of this kind must be viewed certainly with all the liberality of a pleading, and under the liberal provisions of our Code there can be no question that there was enough in the notice in the case at bar in this respect to put the city on notice that it was the sidewalk itself that was defective, that it was no pendent obstruction, and that it was no obstruction of any kind on the top of the sidewalk. These things they would not naturally look for under the notice given in this case; for, where the allegation is that the claimant fell through a defective sidewalk, any ordinarily intelligent mind would immediately reach the conclusion that there was a hole in the sidewalk, or some aperture through which the claimant fell. This case, instead of being governed by the Mears Case, supra, falls more squarely within the rule announced in Falldin v. Seattle (decided Oct. 28, 1908) 97 Pac. 658, where the language of the claim was, "Fell through said sidewalk, owing to the defective condition, into a hole thereunder," and this language was held sufficient to give notice to the city of the defect complained of.

The rule of all the cases was summarized by this court in Ellis v. Seattle, 47 Wash. 578, 92 Pac. 431, where it was said: "This court has uniformly placed a liberal construction upon the requirements of such notice, holding that the notice had a common-sense object, viz., to apprise the officers of the municipality of the location, so that it might be examined with a view to preparing a defense to the action if it was thought a defense should be made; that if it directs the attention of said officers with reasonable certainty to the place of the accident, the requirements of the notice have been met; and that it was not intended that the terms of the notice should be used as a stumbling block or pitfall to prevent recovery by meritorious claimants." Surely this notice did direct the attention of the officers with reasonable certainty to the place of the accident, and, when they were once there, the announcement made to them by the notice that the claimant fell through a defective side walk at that particular point was an announcement sufficiently plain to direct an intelligent investigation on the part of such officers. The evident spirit of this character of objections is to prevent a hearing on the merits, and therefore cannot be sustained.

The judgment will be reversed, and the court instructed to overrule the objections to the introduction of the claim and proceed with the trial of the cause.

HADLEY, C. J., and RUDKIN and CROW, JJ., concur.

MOUNT, J. I cannot agree that the provision of the city ordinance requiring the claimant to give his residence for one year last past is an unreasonable requirement. I therefore dissent.

FULLERTON, J., concurs.

NOTE.—*Power of Court to Declare Ordinance Invalid Because it is Unreasonable—As to Giving Notice of Claims.*—The principal case declares that the court has such power. Upon examination however, we find, that it rests its opinion upon an earlier case decided in the same court. An examination of that case discloses the fact that the reasonableness of the ordinance there under consideration was not particularly brought in question.

The case of Moultor v. City of Grand Rapids (Mich.), 118 N. W. 919, decided within two weeks of the decision of the principal case considering an ordinance relating to a like matter, holds that whether the limitations imposed are reasonable or unreasonable is a question for the legislature, and not for the courts. In this case the court said: 'In our opinion it was the intention of the legislature to provide for two notices in all cases of injuries from defects in sidewalks, etc.; the one designed as a 'preliminary notice' to state briefly the location of the defect and its general character, and the other designed as a 'specific notice' to specify in detail the plaintiff's claim. We are also of the opinion that section 486 relates to both of the notices required, and that a verdict should have been directed for defendant, unless plaintiff's third point is valid. The right to recover for injuries arising from want of repair of sidewalks, etc., is a purely statutory one in this state. It being optional with the legislature whether it would confer upon persons injured a right of action therefor or leave them remediless, it could attach to the right conferred any limitations it chose. Whether the limitations

imposed are reasonable or unreasonable in such cases are questions for the legislature, and not for the courts."

The reason of the Michigan court, given, for arriving at this conclusion is, that the right to recover for injuries arising from want of repair of sidewalks, is a purely statutory one in that state, and it being optional with the legislature whether it would confer upon persons injured, a right of action, therefor, or leave them remediless, it could attach to the right conferred any limitations it chose. Authorities cited to sustain this proposition are not very clear, as to the limitation, thus placed upon powers of the court.

Among the cases cited by the Michigan Court, is that of Crocker v. City of Hartford, 66 Conn. 387. This Connecticut case lays down clearly the doctrine which the Michigan court applies in such cases. In this Connecticut case, it is said, "that the municipal corporations upon which the legislature has imposed the burden of repairing the highways, within their respective limits are not liable at common law for injuries sustained by travelers, by reason of defects in such streets, when such defects are not of a structural character. The right to maintain an action against municipalities for such injuries is granted by statute only, and that right thus created is limited by the express terms of the statute, and cannot be extended by the court."

In this Connecticut case, the same statute making a corporation liable, included the limitation which the court had under consideration, and therefore the conclusion of that court seems logical.

As a general rule, however, and such it may be assumed is the law in the state in which the principal case was decided, municipal corporations are made liable by general statute for injuries sustained on a highway, or such liability is held to follow from the fact that the corporation is by law bound to keep up the streets and proper repair and free from nuisances, and therefore it might very properly be held, that the statute from which its right flows not having in itself limited its application, the court would hold that the municipal corporation must in making limitations on the right only, make those which are reasonable.

Same—General Rule as to Reasonableness of Ordinances.—Certainly as a general proposition of law, the courts have always maintained the right to pass upon the reasonableness or the unreasonableness of an ordinance. The doctrine is laid down in Cyc, Vol. 28, page 368, "except where the corporation has special charter power to enact the by-law or ordinance, the courts not only annul the ordinance and by-laws, because they contravene the higher laws of constitution and statutes, but they do not hesitate to declare them void, and inoperative, because they appear to the judicial mind, unreasonable or oppressive." An example, where a court held that it could not declare an ordinance unreasonable, is given, where a statute expressly authorized a municipal board to designate the number of street railway tracks, that should be laid in any street, lane, or avenue, of a city, the court could not set aside as unreasonable an ordinance which authorized the laying of a double track. State v. Jersey City, 57 N. J. L. 293.

Dillon on Municipal Corporations, page 405, states the rule to be "what the legislature distinctly says might be done cannot be set aside by courts because they may deem it to be unreasonable, or against sound policy, but where the power to legislate on a given subject is conferred and the mode of its exercise is not prescribed, then the ordinance passed in pursuance thereof, must be a reasonable exercise of the power, or it will be pronounced invalid."

An examination and application of these rules may remove the apparent conflict of the Michigan case, and the principal case. It is probable, although the Michigan cases referred to do not clearly so show, that, in fact in that state, the statute from which the liability follows, likewise places limitations upon the measure of enforcing that liability. If that be true, then the Michigan court is within the exception, but if the statutes of that state, in a general way make municipal corporations liable for injuries occurring upon the streets, and likewise give such corporation power to pass ordinances regulating the same, then the decision of the Michigan court would not be in *accord with the principal case* which is certainly sustained by the *great weight of authority.*

Same—Particular Instances of What Ordinances are Reasonable or Unreasonable—Definite Authority of Municipality.—In Darlington v. Ward, 48 S. C. 570, an ordinance was passed, forbidding the keeping of hogs within the corporate limits. It was attacked as being unreasonable. By a divided court it was held that where an ordinance was not unconstitutional, and was clearly within the scope of the power delegated, the court could not consider whether it was reasonable or not. To the same effect, is the case of Beiling v. City of Evansville, 144 Ind. 644, where it was held that an ordinance prohibiting maintenance of a slaughter-house within the city limits, could not be defeated by the courts, because it was unreasonable. In Skaggs v. City of Martinsville, 140 Ind. 476, an ordinance provided a penalty for lot owners permitting the waters from wells and springs to flow upon the streets. Here it was held that courts will not inquire into the reasonableness of the ordinance, when power exists to pass it. This holding was founded upon the theory that power was expressly given to control the streets and enforce sanitary regulations. In Rund v. Town of Fowler, 142 Ind. 214, the same doctrine was announced as to a slaughter-house. In State v. Payssan (La.), 17 So. 481, it is asserted that where legislature confers express powers upon the municipality to pass ordinances to protect health and maintain cleanliness, an ordinance adopted in order to remove and destroy animal and vegetable matter, the court will not go into the reasonableness of the ordinance.

Same—Same—Indefinite Authority of Municipality.—In Hanes v. Kate May, 50 N. J. L. 55, we have the doctrine laid down, which is followed by Dillon on Municipal Corporations, and that is that the court will inquire into the reasonableness of ordinances passed by a municipal body, under legislative authority, where the powers granted are expressed in terms which are general and indefinite, but where the legislature has defined the delegated powers and prescribed with precision the penalties that may be imposed, an ordinance within the power granted, prescribing a penalty within the designated limit, could not be set aside as unreasonable. This we believe to be a most proper distinction founded upon both principle and authority. Where the authority given is vague, indefinite or very general, the courts may consid-

er the reasonableness of any ordinance passed thereunder. Thus, in City v. Cleveland R. R. Co., 146 Ind. 66, an ordinance requiring certain railroad regulations, as to running of trains, etc., it was held that the court had a right to go into reasonableness of the ordinance. The same doctrine was announced in Pittsburg Railway Co. v. Town of Crown Point, 146 Ind. 421; City of Lake View v. Tate, 130 Ill.; Meyers v. Railroad Company, 57 Iowa, 555; Evison v. Chicago Railway Co., 45 Minn. 370. See also Phillips v. City of Denver, (Colo.), 34 Pac. 902, (prohibiting the location of a livery stable in certain parts of the city); Taylor v. City, 34 Ark. 603 (measuring and weighing hay). See also Pierce v. City of Aurora, 81 Ill. App. 670; City of Chicago v. Gunning System, 114 Ill. App. 377; City of Springfield v. Starke, 93 Mo. App. 70.

In Ex Parte Chin Yan, 60 Calif. 78, where an ordinance prescribing a penalty for visiting a place of practicing gambling, was under consideration, the court distinctly announces the doctrine to be followed, that where the legislature distinctly says a thing may be done, the act cannot be set aside by the court, because they may deem it unreasonable or against sound policy. But where the power is given, and the mode of exercise not prescribed, courts will go into the reasonableness of the ordinance. The same doctrine was laid down in Ex Parte Frank, 52 Calif. 606, where an ordinance exacting the payment of license from transient peddlers was under consideration, the court going into the question whether it was reasonable or not. See also to same effect: Tony v. Maher (Ga.), 46 S. E. 80, (affecting values placed upon suburban property); City of Carylton v. Bazzette, 159 Ill. 284, (relating to the requirement of a license from non-residents to sell goods); Haws v. City of Chicago, 158 Ill. 653, (compelling the substitution of a cement sidewalk in place of a plank walk); Tuckman v. Chicago, 78 Ill. 406, (forbidding of erection of a distillery or slaughter-house, within certain territory of Chicago); City of Shreveport v. Robinson (La.), 26 So. 277, (restricting the place for operation of launderies); City of Saginaw v. Swift, 113 Mich. 660, (charging 50 cents per annum for inspection of an electric light pole, when the actual cost was only 5 cents); Matter of Frazee, 63 Mich. 396; State v. Diering, 84 Wis. 585, (prohibiting marching, parading, or riding with musical instruments, banners, flags, etc.); City of Cape Girardeau v. Riley, 72 Mo. 220, (requiring merchants to pay an ad valorem tax); City of St. Louis v. Fitz, 53 Mo. 582, (providing that a person might be fined merely for associating with thieves); Cleveland v. City of Connersville, 147 Ind. 277, (requiring a railroad company to maintain lights at a certain point); Davis v. Town of Anita, 73 Iowa, 325, (requiring certain articles to be weighed); Town v. Barenstein, 66 Iowa, 249, (requiring a peddler to pay a license); City of Boston v. Shaw, 1 Metc. (Mass.) 130, (requiring that every person who enters his particular drain into a common sewer of the city, should be held to pay to the city such sum as is his just proportion of the expense of making such common sewer).

In Skinner v. Heimen, 64 Mo. App. 441, it was held that an ordinance might in its general scope, be considered reasonable, and in its application to a particular state of facts, unreasonable. See also Nicoulin v. Lowry, 49 N. J. L. 391. In City of Lamar v. Weidman, 57 Mo. App. 507, the same doctrine is announced when it is said, the courts will declare an ordinance void or unreasonable where it is oppressive, unequal, unjust, or altogether unreasonable. To same effect: City of Yonkers v. Yonkers, 64 N. Y. S. 955, (requiring street cars to have vestibules); City of Buffalo v. Collins Baking Company, 57 N. Y. S. 349, (regulating the weight of baker's bread); Kirkham v. Russell, 76 Va. 956, (providing a classification of members of council).

WM. M. ROCKEL.

Springfield, Ohio.

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HUMOR OF THE LAW.

A certain prominent lawyer of Toronto is in the habit of lecturing his office staff from the junior partner down, and Tommy, the office boy, comes in for his full share of the admonition. That his words were appreciated was made evident to the lawyer by a conversation between Tommy and another office boy on the same floor which he recently overheard.

"Wotcher wages?" asked the other boy.

"Ten thousand a year," replied Tommy.

"Aw, g'wan!"

"Sure," insisted Tommy, unabashed. "Four dollars a week in cash an' de rest in legal advice."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort and of all the Federal Courts.

1. **Alteration of Instruments**—Effect.—Where plaintiff wrongfully struck the words "in full to date" from a check received before cashing it, he was thereby precluded as a matter of law from recovering for pre-existing items of indebtedness.—Dove v. Fansler, Mo., 112 S. W. 1009.

2. **Amicus Curiae**—Appointment.—On appeal from an order refusing a statutory liquor license, the court may appoint an amicus curiae to defend.—State v. Gorman, Ind., 85 N. E. 763.

3. **Appeal and Error**—Appealable Orders.—An order setting aside a judgment against a garnishee and permitting him to answer is not a final order, and appealable.—Darby v. French, Ky., 112 S. W. 1132.

4.——Bill of Exceptions.—A bill of exceptions certified by bystanders under the statute, where the party excepting is not satisfied with the court's correction of his proposed bill, must be taken as representing the true state of the record, in the absence of controverting affidavits.—Boone v. Holder, Ark., 112 S. W. 1081.

5.——Conflicting Evidence.—A verdict based on conflicting evidence will not be set aside on appeal or writ of error, if the evidence of the successful party is sufficient to sustain the judgment, unless the verdict is clearly against the weight of the evidence.—Donelson v. East St. L. & S. Ry. Co., Ill., 85 N. E. 914.

6.——Motion for New Trial.—A motion for a new trial made on several grounds, and granted without assignment of specific reasons, will not be reversed on appeal on affidavits that only one ground was considered, especially where the trial judge makes no statement of the points considered.—Best v. City of Seattle, Wash., 97 Pac. 772.

7.——Presumption as to Record.—The court will not explore the transcript for evidence omitted from the abstract in violation of court rule nine, but will presume that the judgment is correct.—Baker v. Cazort, Ark., 112 S. W. 890.

8. **Assault and Battery**—Damages.—In actions for assault and battery, the jury may consider not only the mental distress, which is a part of the bodily pain, but also that other condition of mind caused by the insult of the blows received.—Stewart v. Watson, Mo., 112 S. W. 762.

9. **Attorney and Client**—Burden of Proof.—The rule that the burden is on an attorney, in an action against his client, to disprove the client's plea, does not apply to an action for services, where the only defense and set-off claimed was damages from the attorney's negligent management of the business.—Priest v. Dodsworth, Ill., 85 N. E. 940.

10.——Duties and Liabilities.—An attorney owes his client the utmost good faith, and equity will avoid any contract made upon any misrepresentation or concealment of material facts by the attorney, or if there is a just suspicion of artifice or undue influence.—Palms' Adm'rs. v. Howard, Ky., 112 S. W. 1110.

11.——Relation.—Where the employment of one is so connected with his professional character as attorney as to afford a presumption that his character formed the ground of his employment by his client, the court will exercise jurisdiction in a summary way to compel him to execute the trust.—In re McIntosh, 112 N. Y. Supp. 513.

12. **Banks and Banking**—Unauthorized Endorsement of Note.—The authority to an agent to collect a note held not to authorize her to indorse a check received from the debtor payable to the principal and cash the same.—Robinson v. Bank of Winslow, Ind., 85 N. E. 793.

13. **Bills and Notes**—Bona Fide Holder.—The rights of one becoming an owner of a note before maturity for a value and without notice cannot be defeated because of the fraud of the payee.—Hames v. Stroud, Tex., 112 S. W. 775.

14.——Possession.—Mere possession of an unindorsed negotiable note made payable to order by a person other than the payee is not prima facie evidence of ownership.—Jolly v. Huebler, Mo., 112 S. W. 1013.

15. **Bills of Lading**—Title to Property Represented.—The holder of a draft, who takes an attached bill of lading by assignment, as security for the amount advanced on the draft, becomes the owner of the goods, as against the acceptor, to an extent sufficient to protect his claim.—Mason v. Nelson, N. C., 62 S. E. 625.

16. **Boundaries**—Official Survey.—Where defendant in fact owned no land west of a certain tract, a survey by the county surveyor could not have the effect of vesting in defendant title to any such land.—Clark v. Boosey, Or., 97 Pac. 754.

17. **Building and Loan Association**—Right to Acquire Real Estate.—Building and loan association in erecting building of more than sufficient capacity to accommodate its then business, and leasing the excess, held not to engage in a business other than that authorized by its charter, in violation of Const. Sec. 192, and Ky. St. 1903, Sec. 567.—Home Savings Fund Co. Bldg. Ass'n. v. Driver, Ky., 112 S. W. 864.

18. **Carriers**—Injury to Person Accompanying Passenger.—One going to a depot merely to say good-by to a passenger held not there on implied invitation of the carrier, but as a licensee, to whom it owes no duty as to safety of waiting room.—Galveston, H. & S. A. Ry. Co. v. Matzdorf, Tex., 112 S. W. 1036.

19.——Transportation of Horses.—A carrier's agent, for an additional compensation having contracted to furnish plaintiff's horses food and water during a delay in transportation, the carrier was responsible for failure to do so.—Gilbert v. Chicago, R. I. & P. Ry. Co., Mo., 112 S. W. 1002.

20. **Charities**—Statutory Provisions.—St. 1890, p. 385, c. 422, creating a corporation to administer a charitable trust, held not to take from a city property which had vested in it under the will creating the trust.—Ware v. City of Fitchburg, Mass., 85 N. E. 951.

21.——Torts.—Charitable corporations are not exempt from liability for torts because they receive no profit or benefit.—Kellogg v. Church Charity Foundation of Long Island, 112 N. Y. Supp. 566.

22. **Chattel Mortgages**—Registration.—Registration of a chattel mortgage covering property in an unorganized county in the county in which that county was attached for judicial purposes held not constructive notice to subsequent purchasers and mortgagees.—First Nat. Bank v. McElroy, Tex., 112 S. W. 801.

23. **Commerce**—Failure of Carrier to Adjust Claim.—Revisal 1905, Sec. 2634, subjecting a carrier to a penalty for failure to adjust a loss within the prescribed time, held not to impose an unlawful burden on interstate commerce, in violation of Const. U. S. art. 1, Sec. 8.—Raleigh Iron Works v. Southern Ry. Co., N. C., 62 S. E. 595.

24. **Constitutional Law**—Gaming Devices.—Where articles are capable of both a lawful and an unlawful use, ministerial officers or courts cannot on mere view deprive the articles of their characteristics as property and put them under legal condemnation.—State v. Derry, Ind., 85 N. E. 765

25.——Judicial Decisions.—Where a constitution or statute has received a construction by the courts of last resort, and contracts have been made, and rights acquired in accordance therewith, a subsequent decision changing the construction cannot invalidate rights acquired under the contracts.—Mason v. Nelson, N. C., 62 S. E. 625.

26.——Occupation Tax.—Acts 29th Leg. p. 217, c. 111, imposing an occupation tax on those purchasing assignments of unearned wages, held violative of Const. U. S. Amend. 14, as a restraint of trade and as denying equality before the law.—Owens v. State, Tex., 112 S. W. 1075.

27.——Power to Regulate Carriers.—Revisal 1905, Sec. 2644, subjecting carrier to a penalty for failure to refund an overcharge within the time prescribed, held not to deny the carrier the equal protection of the law in violation of Const. U. S. Amend. 14.—Raleigh Iron Works v. Southern Ry. Co., N. C., 62 S. E. 595.

28.——Right to Administer Decedent's Estate.—The right of a nonresident to be appointed administrator or executor is not a privilege or immunity guaranteed by the federal constitution, especially article 4, Sec. 2.—In re McWhirter's Estate, Ill., 85 N. E. 918.

29. **Contracts**—Breach.—Where an oral contract for the sale of stone was completed, except that it was not reduced to writing as contemplated, it was enforceable, though not reduced to writing and delivered before breach.—Hollerbach & May Contract Co. v. Wilkins, Ky., 112 S. W. 1126.

30. **Conversion**—Directions in Will.—Where an executor was directed to convert the property into cash, and to sell it at public or private sale, and distribute the proceeds as directed, this amounted to a devise of the real estate to him.—Fenton v. Hall, Ill., 85 N. E. 936.

31. **Costs**—Dismissal Grounds.—The court cannot arbitrarily dismiss a case for plaintiff's failure to pay the cost of a former action against the same defendants dismissed without prejudice.—Wilson v. Sullivan, Ky., 112 S. W. 1120.

32. **Corporations**—Medical Services For Employees.—Corporations whose business is "stationary" are not bound to furnish their employees with medical services, and the general officers of such corporations cannot charge the corporations for such services.—Sourwine v. McRoy Clay Works, Ind., 85 N. E. 782.

33. **Courts**—Constitutional Questions.—Where a party filed briefs in the Appellate Court, presenting the question of the constitutionality of a statute, the cause will be transferred to the Supreme Court.—East Chicago Co. v. City of East Chicago, Ind., 85 N. E. 783.

34.——Jurisdiction of Supreme Court.—The Supreme Court held to have jurisdiction of writ of error in garnishment proceedings ancillary to judgment of the district court though the amount involved was within the jurisdiction of the county court.—Simmang v. Pennsylvania Fire Ins. Co., Tex., 112 S. W. 1044.

35.——Justice of the Peace.—Justices' proceedings must show the facts bringing a case within their jurisdiction, or the whole proceeding is void.—Little Rock Brick Works v. Hoyt, Ark., 112 S. W. 880.

36. **Criminal Evidence**—Admissibility.—In a manslaughter trial, held not prejudicial error to allow a physician to testify as to the course of the fatal bullet.—Cornelius v. State, Tex., 112 S. W. 1050.

37. **Criminal Law**—Instructions.—Though a trial judge must put his entire charge in writing when so requested, it is not reversible error to state the contentions of the parties orally, or to supplement slight omissions.—State v. Khoury, N. C., 62 S. E. 638.

38. **Criminal Trial**—In Unorganized Counties.—Under a statute attaching an unorganized county to an organized county for "judicial purposes," the grand jury of the organized county has jurisdiction to indict for offenses committed in the unorganized county.—First Nat. Bank v. McElroy, Tex., 112 S. W. 801.

39.——Plea of Guilty.—A plea of guilty in justice court of disturbing the peace did not prevent accused from appealing to the circuit court, nor deprive her of the right to a trial de novo expressly under Cr. Code Prac. Secs. 174, 366.—Holtman v. Commonwealth, Ky., 112 S. W. 851.

40.——Self-Serving Declarations.—The law will not permit one who intended to perform a criminal act to make declarations, a day or two before the act, as to the lawful purpose in mind, and then introduce such declarations to justify himself.—People v. Huntington, Cal., 97 Pac. 760.

41. **Damages**—Breach of Contract.—In an action for breach of contract to furnish stone to defendant, plaintiff held entitled to recover the profit he would have made had he been permitted to carry out the contract.—Hollerbach & May Contract Co. v. Wilkins, Ky., 112 S. W. 1126.

42.——Procuring Discharge of Servant.—In an action by a nonunion man against union men for his discharge from various employments because of their wrongful acts, the question whether the acts of defendant were malicious held for the jury.—Carter v. Oster, Mo., 112 S. W. 995.

43. **Deeds**—Delivery—Title to real estate passes by execution and delivery of deeds, and title, once vested, is not devested because the grantee may hand the deed back to some one.—Rothbard v. Abels-Gold Realty Co., 112 N. Y. Supp. 526.

44.——Effect of Recital.—Authority of one to convey land as agent for the county, as recited in the deed, will be presumed, where the county records have been destroyed, and where the deed was executed thirty-eight years ago.—Hardin County v. Nona Mills Co., Tex., 112 S. W. 822.

45. **Descent and Distribution**—What Law Governs.—A citizen of Viginia who entered the military service of Texas in her war for independence, and who died in her service, was at the time of his death, a citizen of Texas, and his estate descended in accordance with the laws of Texas.—Waterman v. Charlton, Tex., 112 S. W. 779.

46. **Ejectment**—Tax Deeds.—No question as to decedent's title to land sued for being raised, and there being no evidence that he left children other than plaintiffs, his wife being dead, or that he disposed of the property, plaintiffs are entitled to recover from those claiming under a tax sale.—Dunn v. Garnett, Ky., 112 S. W. 841.

47. **Electricity**—Injury to Trespasser.—An electric light company held not liable for the death of a trespasser through coming in contact with a live wire, charged through the failure of the company to comply with city ordinances.—Burnett v. Ft. Worth Light & Power Co., Tex., 112 S. W. 1040.

48. **Equity**—Jurisdiction.—Where a contractor submits to a suit in equity by an assignee of the money due under the subcontractor's contract, mechanic's lien claimants, though necessary parties, cannot object to the suit being brought in equity.—Lovett v. Harden Bros. Trucking Co., 112 N. Y. Supp. 552.

49. **Estoppel**—Boundaries.—Where defendant's deed described the property with reference to a map of a city addition, plaintiff as a privy of defendant's prior grantor was estopped to dispute the natural boundaries as shown on a map.—Inter-City Realty Co. v. Newman, 112 N. Y. Supp. 481.

50.——Knowledge of Facts.—Estoppel in pais by acquiescence held founded on knowledge of the material facts and assent.—Tennent v. Union Cent. Life Ins. Co., Mo., 112 S. W. 754.

51. **Evidence**—Admissions.—Acquiescence, to have the effect of an admission, must exhibit some act of the mind, and amount to a voluntary demeanor or conduct of the party.—Bass v. Tolbert, Tex., 112 S. W. 1077.

52.——Sufficiency.—The essential facts to support a civil action may be established by circumstantial as well as by direct evidence, and in some cases the circumstances may be such as to overcome direct and positive testimony to the contrary.—Evansville Metal Bed Co. v. Loge, Ind., 85 N. E. 979.

53. **Executors and Administrators**—Accounting.—Where children of a deceased administrator of an estate in which they have an interest bring an action against the administrator de bonis non for a settlement, the original administrator's estate should be administered and his administrator made a party to the action.—Rawlings' Guardian v. Rawlings, Ky., 112 S. W. 862.

54.——Attorneys Fees.—Where an administrator pays an attorney an excessive fee, the same, in the absence of bad faith, should be corrected when the administrator reports.—Scott v. Smith, Ind., 85 N. E. 774.

55.——Claims Against Estate.—That an administratrix has knowledge of a claim against the decedent's estate does not supply the want of a written statement thereof.—In re Brown's Estate, 112 N. Y. Supp. 599.

56.——Claims and Set-Offs.—A debtor cannot set off a claim from the decedent against a debt for which he is liable to the administrator growing out of transactions with the latter.—Printy v. Cahill, Ill., 85 N. E. 753.

57.——Property Held in Trust.—Where plaintiff, having the legal title to a note, sues thereon, and on the death of the owner executes an assignment to his legatee, and thereafter dies, and the action is revived, by his administrator, the proceeds of a judgment are held by the administrator in trust for the assignee.—Wood v. Sheidley, Kan., 97 Pac. 800.

58.——Purchase of Land.—Where executors purchase land with funds belonging to decedent's widow and minor children, and take a deed to them, charging the land with a lien for part of the price, the grantees hold the land subject to the lien, and cannot complain that it is enforced.—Leavell v. Carter, Ky., 112 S. W. 1118.

59.——Right to Administer.—The right to administer an estate being first in the state, it may in certain cases place the administration in the hands of the public administrator.—In re McWhirter's Estate, Ill., 85 N. E. 918.

60. **Extraditions**—Fugitive From Justice.—A fugitive from justice is "charged" with a crime, within the extradition law, only when he is charged lawfully by a person who has knowledge of its commission, or is possessed of sufficient information, which he states under oath.—People v. Warden of City Prison of Brooklyn, 112 N. Y. Supp. 492.

61. **Fire Insurance**—Rights of Mortgagee.—The rights of the mortgagee of premises covered by a fire policy held fixed by the policy, and not to be affected by any adjustment made without its knowledge by insured with insurer.—Leslie v. Firemen's Ins. Co. of Newark, N. J., 112 N. Y. Supp. 496.

62. **Fraud**—Rescission.—One induced by the fraud of another to purchase notes held entitled to retain the notes, and sue for the difference between their value and what they were represented to be worth, though the notes are not in his possession at the trial.—Siltz v. Springer, Ill., 85 N. E. 748.

63. **Frauds, Statute of**—Oral Contracts.—In an action for the purchase price of goods, held not permissible to couple certain letters canceling the order with the invoices acknowledged therein, so as to take the contract out of the statute of frauds.—Porter v. Patterson, Ind., 85 N. E. 797.

64. **Guardian and Ward**—Persons Entitled.—Paternal aunts of infants adhering to Catholic faith appointed guardians in place of the stepfather on the death of their mother, he being a Protestant.—In re McConnon, 112 N. Y. Supp. 590.

65.——Sale of Real Estate.—The estate of a ward and his succeeding guardian held liable for so much of the purchase price of an unconfirmed sale of the ward's real estate as was applied directly to the benefit of the ward or

his estate.—McMinn v. Cope, Tex., 112 S. W. 809.

66. **Homestead**—Exemption.—Where land conveyed to a debtor in part payment for a business homestead and other property was conveyed by the debtor after it had been attached, the burden was on the debtor's grantee to show that the land was exempt when attached.—McGovern v. Taliaferro, Tex., 112 S. W. 814.

67. **Homicide**—Conspiracy.—On a trial for murder committed by accused and his brother pursuant to a conspiracy, an instruction held not erroneous for failing to state with whom the brother had formed the common intent to kill decedent.—Proctor v. State, Tex., 112 S. W. 770.

68.——Evidence.—One accused of manslaughter having shown threats by decedent, under Pen. Code, art. 713, the state could show that decedent was peaceable, etc.—Cornelius v. State, Tex., 112 S. W. 1050.

69. **Husband and Wife**—Alienation of Affection.—In an action for the alienation of a husband's affections, evidence of the affectionate relations existing between the wife and her husband before the estrangement, and of his conduct indicating a loss of his affection, held admissible.—Leucht v. Leucht, Ky., 112 S. W. 845.

70.——Estoppel as to Married Women.—Under the married woman's statute, the doctrine of estoppel obtains against a married woman. —Tennent v. Union Cent. Life Ins. Co., Mo., 112 S. W. 754.

71.——Sale of Wife's Personal Property.—A sale by the husband of his wife's personal property is invalid, unless he had express authority from her to sell or unless she ratified the sale. —Hudspeth v. State, Tex., 112 S. W. 1069.

72. **Indictment and Information**—Rape.—An indictment for rape on a child under sixteen years of age, which charges an assault and battery and rape, is not bad for duplicity.—Cheek v. State, Ind., 85 N. E. 779.

73. **Infants**—Estoppel.—In an action to cancel a deed on the ground the grantor was an infant when it was executed, the burden was on the grantor to show her minority at that time. —Edgar v. Gertison, Ky., 112 S. W. 831.

74. **Injunction**—Restraining Orders.—An order by the probate judge in the absence of the district judge, and in an action in the district court, which order is operative until the district court or judge thereof shall act, is a restraining order, and not a temporary injunction.—State v. Johnston, Kan., 97 Pac. 790.

75. **Intoxicating Liquors**—Keeping For Sale. —An ordinance prohibiting the keeping of liquors for illegal sale held not invalid on the ground that it punishes mere intention.—Callaway v. Mims, Ga., 62 S. E. 654.

76.——Local Option Laws.—The legislature may fix the dates on which the sale of liquors shall commence in towns voting in favor of license, and when licenses shall cease in towns voting no license, and may change such dates. —People v. Bashford, 112 N. Y. Supp. 502.

77.——Nuisance.—Where it is not shown that the court failed to apply the rules of law to the facts in fixing a time for trial to determine whether the property seized by a sheriff in the prosecution for maintaining a common nuisance should be forfeited, the order will not be reversed.—State v. Foren, Kan., 97 Pac. 791.

78.——Sale of Near Beer.—Sale of intoxicating liquor held not to render seller amenable to a municipal ordinance imposing a license on the sale of "near beer."—Burch v. City of Ocilla, Ga., 62 S. E. 666.

79.——Time For Filing Remonstrance.—A person cannot become a remonstrant on an application for a liquor license by filing a remonstrance for the first time on appeal from a decision of commissioners.—State v. Gorman, Ind., 85 N. E. 763.

80. **Judgment**—Courts of Foreign Countries. —An English judgment, though pronounced through a resort to presumptive evidence at variance with the rule of New York, held entitled to full force and effect.—Newton v. Hunt, 112 N. Y. Supp. 573.

81.——Parties Concluded.—Where an action against three defendants was, after a verdict for plaintiff, dismissed as to two defendants not served, the verdict was valid as against defendant served, and judgment was properly rendered against him.—Siltz v. Springer, Ill., 85 N. E. 748.

82.——Res Judicata.—A judgment of dismissal without prejudice of an action by a city for the removal of piles from land claimed as a street held not a bar to a subsequent suit by the city for the land.—City of Covington v. Chesapeake & O. R. Co., Ky., 112 S. W. 862.

83. **Jury**—Determination of Facts.—That parties agreed to waive a jury would not authorize one of them by stipulation to consent to the entry of final judgment on appeal to the Supreme Court so as to confer on such court power to pass on the facts.—Hayward v. Sencenbaugh, Ill., 85 N. E. 939.

84. **Justices of The Peace**—Jurisdiction.— An order for the payment of wages held not a sufficient statement of a demand against the servant's employer to justify a justice of the peace in issuing a summons against such employer, under Kirby's Dig. Sec. 4565.—Little Rock Brick Works v. Hoyt, Ark., 112 S. W. 880.

85. **Landlord and Tenant**—Notice to Quit.— Notice to quit is waived by the landlord giving a subsequent notice fixing a later date for a surrender of the premises.—Reck & Riehl v. Caulfield, Ky., 112 S. W. 843.

86. **Larceny**—Sufficiency of Evidence.—On a trial for larceny, the jury, if having a reasonable doubt of the guilt of accused based on his possession of the stolen property by reason of his explanation thereof, held required to acquit him.—Mason v. State, Ind., 85 N. E. 776.

87. **Limitation of Actions**—Mutual Accounts. —Where a joint account of a husband and wife with defendant contained items on both sides running for a number of years down to December, 1904, an action thereon was not barred in 1905.—Mt. Nebo Anthracite Coal Co. v. Martin, Ark., 112 S. W. 882.

88. **Livery Stable Keeper**—Care Required as to Horses.—Livery stable keeper is liable for injuries to animals placed in his care for hire only by a failure to exercise ordinary care.— Bigger v. Acree, Ark., 112 S. W. 879.

89. **Marriage**—Requisites as to Proof.—Proof of a marriage occurring over fifty years ago, especially as between slaves, need not be as

strong as is required to establish more recent marriages.—Dunn v. Garnett, Ky., 112 S. W. 841.

90. **Master and Servant**—Contributory Negligence.—In an action for the death of a conductor, occasioned by his jumping from a car jumping the track, an instruction held to properly present the issue of contributory negligence in jumping from the car.—Dortch v. Atlantic Coast Line R. Co., N. C., 62 S. E. 616.

91.——Duty to Warn Servant.—A master is not bound to anticipate that a servant will step aside from his work, and put his hand into an obviously dangerous place.—Vigo Cooperage Co. v. Kennedy, Ind., 85 N. E. 986.

92.——Independent Contractors.—The duty of an employer to an independent contractor and his servants stated, where the employer retains the right to furnish instrumentalities for the work.—Kiser v. Suppe, Mo., 112 S. W. 1005.

93.——Injuries to Servant.—In an action for injuries to a miner, it is not error to refuse an instruction that a miner could not recover for injuries caused by rock in his room falling upon him, without qualifications as to his own care or knowledge of the danger.—Barrett v. Dessy, Kan., 97 Pac. 786.

94.——Injuries to Servant.—It is a sufficient answer to the charge that a gang foreman did not furnish sufficient men to handle and carry rails that there was no charge that any particular number of men were promised or necessary therefor.—Indianapolis Traction & Terminal Co. v. Kinney, Ind., 85 N. E. 954.

95.——Master's Duty.—An employer must instruct an employee as to patent, as well as latent, dangers, if through the employee's youth and inexperience, he does not appreciate them.—Arkansas Cent. R. Co. v. Workman, Ark., 112 S. W. 1082.

96.——Railway Mail Clerk.—Railway mail clerk, injured while attempting to alight from the mail coach of one railway, held to have no right of action against another railway because of a failure of its employee to warn him that the train was about to start.—Houston & T. C. R. Co. v. Keeling, Tex., 112 S. W. 808.

97.——Respondeat Superior.—The rule of respondeat superior held to apply only to the strict relation of master and servant, which exists when one has the order and control of the work done by the other.—Kellogg v. Church Charity Foundation of Long Island, 112 N. Y. Supp. 566.

98.——Threat of Strike.—The threat of a strike which will give a right of action to an employee discharged in consequence thereof must be of a substantial character and adapted to influence a person of reasonable firmness and prudence.—Carter v. Oster, Mo., 112 S. W. 995.

99.——Violation of Rules.—Where a master relies upon a violation of rules by the servant to prevent a recovery, he must plead the violation.—Texas & N. O. R. Co. v. Powell, Tex., 112 S. W. 697.

100. **Miscellaneous Insurance**—Cause of Loss.—A plate glass window held to be destroyed by design and not by accident, within a policy limiting the company's liability to breakage resulting from accident.—Frisbie v. Fidelity & Casualty Co., Mo., 112 S. W. 1024.

101. **Mortgages**—Deed as Mortgage.—The intent of the parties furnishes the only true and infallible test to determine whether a deed is a mortgage or a conditional sale, and the intention is to be gathered from the circumstances surrounding the transaction, and the conduct of the parties.—Beidleman v. Koch, Ind., 85 N. E. 977.

102.——Default in Payment of Interest.—Election to treat the principal of a mortgage assigned as collateral security as due for nonpayment of interest held required to be made by assignor and assignee jointly.—Cresco Realty Co. v. Clark, 112 N. Y. Supp. 550.

103.——Exemptions.—A mortgagor held not entitled to claim an exemption in the proceeds of a foreclosure sale, as against a mortgagee holding a mortgage on only a part of the premises sold.—Broeker v. Morris, Ind., 85 N. E. 982.

104. **Negligence**—Dangerous Premises.—Employees or licensees using an alleyway used by an owner for his business held entitled to recover for injuries from pitfalls placed thereon.—Briscoe v. Henderson Lighting & Power Co., N. C., 62 S. E. 600.

105.——Imputed Negligence.—Negligence of the driver of an automobile, in which plaintiff was riding as a guest at the time she was injured in a collision with a street car, held not imputable to her.—Chadbourne v. Springfield St. Ry. Co., Mass., 85 N. E. 737.

106.——Infants.—A child, twenty-five months old, is not, as a matter of law, guilty of contributory negligence in going and remaining on a railroad track, notwithstanding the approach of a train.—Galveston, H. & N. Ry. Co. v. Olds, Tex., 112 S. W. 787.

107.——Instructions.—In an action for death resulting from negligence, the court's charge should inform the jury what acts or omissions they might find to constitute negligence.—Clancy v. New York, N. H. & H. R. Co., 112 N. Y. Supp. 541.

108.——Stock Yard Company.—A stockyard company, furnishing pens to shippers of stock, held liable for failure to exercise reasonable care to guard a shipper against injury while on its premises.—Franev v. Union Stockyard & Transit Co. of Chicago, Ill., 85 N. E. 750.

109. **Obscenity**—What Constitutes.—Any gross reference to the private parts of a woman, or to any of the surrounding portions of her person, held prima facie obscene and vulgar, within Pen. Code 1895, Sec. 396.—Holcombe v. State, Ga., 62 S. E. 647.

110. **Partition**—Right to Relief From Bid.—Purchaser at partition sale held not entitled to relief from his bid because of lien of taxes on a few inches of the lot; title failing as to them, and they not being included in his deed, but he being made an allowance therefor.—Uebelacker v. Uebelacker, 112 N. Y. Supp. 527.

111. **Partnership**—Accounting.—The right of a surviving partner to a portion of the salary due and unpaid the deceased partner at the time of his death, for services rendered such surviving partner as receiver of a railroad, could be determined only on a partnership accounting.—Jones v. Gardner, Tex., 112 S. W. 826.

112. **Pleading**—Statutes.—A statute is not to be isolated from the body of the law of which it is a part, but is to be construed as part of one system and with reference to co-ordinate

rules and statutes.—Minnich v. Packard, Ind., 85 N. E. 787.

113. **Powers**—Creation of Power.—To satisfy the reasonable meaning of the statute of uses and trusts, the time of "creation" of the power of unequal appointment among the children of the settlor of a trust declared.—Newton v. Hunt, 112 N. Y. Supp. 573.

114. **Principal and Agent**—Authority of Agent. —Where defendant claimed that P. had authority to accept payment of a deed of trust for plaintiff, the burden of proof of such agency was on them.—Jolly v. Huebler, Mo., 112 S. W. 1013.

115.——Knowledge of Agent.—Where insured, in a policy pledged for a loan from insurer, was the agent of the beneficiary for the purpose of receiving notice of sale of the policy on default, only such knowledge could be imputed to the beneficiary as insured possessed as to the sale.—Tennent v. Union Cent. Life Ins. Co., Mo., 112 S. W. 754.

116.——Unauthorized Act of Agent.—The act of a principal in claiming a check received by his agent in payment of a note held not a ratification of the agent's act in indorsing the principal's name on the check and receiving payment.—Robinson v. Bank of Winslow, Ind., 85 N. E. 793.

117. **Prisons**—Compensation of Officers—Where the warden and directors of the penitentiary employed the chaplain to superintend a prison school, agreeing to pay the sum of $30 a month in addition to his salary as chaplain, held, that the State Auditor properly refused to allow a claim therefor.—McBrian v. Nation, Kan., 97 Pac. 798.

118. **Prohibition**—Adequacy of Remedy by Appeal.—Extraordinary legal remedies, such as prohibition, will not lie if there is an adequate legal remedy by appeal, whether the court to whom they are addressed is acting within or without its jurisdiction, but, where the remedy by appeal is inadequate, such writs will issue.—State v. Superior Court of Washington, Pierce County, Wash., 97 Pac. 778.

119. **Railroads**—Station Accommodations.—Five hundred dollars held not excessive recovery against a railway company for wrongfully, ejecting plaintiff and his wife from a waiting room.—St. Louis Southwestern Ry. Co. of Texas v. Foster, Tex., 112 S. W. 797.

120.——Station Accommodations.—The statute requiring railway companies to keep their waiting rooms open before and after the arrival and departure of trains held not applicable to through passengers awaiting connections at junctions.—St. Louis Southwestern Ry. Co. of Texas v. Foster, Tex., 112 S. W. 797.

121.——Vestibuled Coaches.—Railroad passengers may assume that vestibuled coaches are safe for the purposes intended and are prudently managed.—Chicago, R. I. & P. Ry. Co. v. Simpson, Ark., 112 S. W. 875.

122. **Records**—Supplying Lost Judicial Record.—Where a lost record has been supplied in a proceeding therefor, the judgment of the court is conclusive that all preliminary steps were properly taken.—Morrison v. Price, Ky., 112 S. W. 1090.

123. **Religious Societies**—Membership.—Adherence to the doctrines of a religious corporation of which morality is always one, is a condition of membership.—Yanthis v. Kemp, Ind., 85 N. E. 976.

124. **Replevin**—Property Subject.—Replevin lies by the owner of personal property against a person who has such property in his possession, without right to retain it as against the owner.—Opperman v. Citizens' Bank of Michigan City, Ind., 85 N. E. 991.

125. **Sequestration**—Replevy Bond.—The failure to render judgment against a wife, who with her husband were principals on a replevy bond, held error as to the sureties on the bond. —Wandelohr v. Grayson County Nat. Bank, Tex., 112 S. W. 1046.

126. **Street Railroads**—Contributory Negligence.—A street car passenger's failure to alight on the car becoming stalled on a railroad track until just as the car was struck by a railroad engine held material on the question of his due care.—Barnes v. Danville St. Ry. & Light Co., Ill., 85 N. E. 921.

127. **Telegraphs and Telephones**—Failure to Deliver Message.—A telegraph company, receiving a message for delivery, cannot disregard the knowledge of the facts which are apparent, and plead its own ignorance as an excuse for its failure to deliver the message.—Suttle v. Western Union Tel. Co., N. C., 62 S. E. 593.

128. **Tenancy in Common**—Liens.—Where land is conveyed to a woman and her infant children, she may create a lien thereon affecting her interest, but not the interests of the minors.—Leavell v. Carter, Ky., 112 S. W. 1118.

129. **Torts**—Interference With Employment. —Third persons are answerable for keeping a man out of employment when the means employed to do so are unlawful.—Carter v. Oster, Mo., 112 S. W. 995.

130. **Trusts**—Termination.—In an action by trustees of property donated for a specified purpose for advice as to the disposition of the property upon the termination of the trust, the donors or their heirs should be made parties.—Taylor v. Rogers, Ky., 112 S. W. 1105.

131. **Vendor and Purchaser**—Nonpayment of Purchase Price.—A vendor of land on installments having waived his right to forfeit the contract for delayed installments until after a levy thereon as the property of the vendee, a purchaser at execution sale was entitled to the property on paying the vendor the balance due.—Braddock v. England, Ark., 112 S. W. 883.

132. **Witnesses**—Competency.—The rule making incompetent testimony as to communications by a client to his attorney held to be limited to cases strictly within the principle of the policy giving it birth.—Hyman v. Grant, Tex., 112 S. W. 1042.

133.——Privileged Communications.—In a proceeding to remove an administrator, he may not waive the privilege as to communications made to physician by decedent, created by Burns' Ann. St. 1901, Sec. 505.—Scott v. Smith, Ind., 85 N. E. 774.

134.——Testifying From Best Recollection.— The testimony of a witness is not to be excluded merely because he prefaces his statement by an expression of unwillingness to commit himself absolutely to the accuracy of what he says.—Holcombe v. State, Ga., 62 S. E. 647.